IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2443 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD & 1 - Petitioner(s)

Versus

VYAS BHOGILAL BABULAL - Respondent(s)

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Appearance :

MR DEEPAK V PATEL for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 05/10/2005

CAV JUDGMENT

1.By filing this petition under Article 226 and 227 of the Constitution of India, the petitioner has prayed to

issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the judgment and award dated 17.8.1994 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No.96 of 1990.

2. It is the case of the petitioner that the respondents were appointed as ad hoc employees on 29 days basis in connection with the work of sale and distribution of text books, note books etc., at concessional rates and that they were not appointed after following regular selection procedure by inviting applications from Employment Exchange and by conducting the selection procedure as contemplated by the Recruitment Rules. It is the case of the petitioner that after the work was not available, the tenure of the appointments of the respondents was not renewed and they automatically ceased to be the employees of the petitioner corporation on expiry of the term for which they were appointed.

3. It appears from the record that the respondents, thereafter, raised industrial dispute which was numbered as Reference (LCA) No.96 of 1990, wherein respondent no. 1 contended that he was working since 1986 and had completed 240 days of work in each year

and that his services were terminated by oral order on 01.10.1989 without notice or inquiry and prayed for reinstatement in service on the ground that there is a violation of Sections 25-F, 25-H and 25-G of the Industrial Disputes Act, 1947 (“the Act” for short). It also appears that respondent no.2 also contended that he was appointed, initially, as apprentice from 1998 and was then appointed as permanent employee, but his services were terminated on 30.09.1989 by oral order without giving notice, compensation or holding inquiry.

4. Ultimately, the Labour Court, Ahmedabad, by its judgment and award dated 17.08.1994, allowed the reference partly by granting reinstatement to the respondents in service and also awarded 50% back wages to respondent no. 1 and 25% back wages to respondent no.2. Being aggrieved and dissatisfied with the said judgment and award dated 17.08.1994, the petitioner has preferred the present petition under Article 227 of the Constitution of India for the aforesaid relief.

5. Mr.Deepak Patel, learned advocate appearing for the petitioner Corporation, has submitted that the respondents were not holding the permanent post and their appointment was temporary, which fact has been

admitted by the respondents in their evidence. He, therefore, submitted that termination of their services would not be retrenchment in view of the provisions contained in sub-clause (bb) of Section 2 (oo) of the Act. He submitted that the finding of the Labour Court that respondent no. 1 had worked for 343 days in the preceding year is vitiated since there is no legal evidence to support the said finding and that the statement produced along with the application exh.14 cannot be treated as piece of evidence. He further submitted that two lists produced along with list Exh.13 cannot be treated as legal evidence to show that 20 workmen have been employed after the termination of the services of the respondents, and, therefore, the Labour Court could not have held that there was breach of Section 25-G of the Act. He further submitted that the finding recorded by the Labour Court that it is proved that respondent No.2 has worked for 240 days is without any basis. In support of his submission, he has relied upon the following decisions.:

(i) Mukesh B.Desai Vs. State of Gujarat and others, reported in 1997(3) GCD 645 (Guj);

(ii) Bhanmati Tapubhai Muliya Vs. State of Gujarat, reported in 1995(2) GLH 228;

(iii) Essen Deinki Vs. Rajiv Kumar, reported in (2002) 8 SCC 400;

(iv) Range Forest Officer Vs. S.T.Hadimani, reported in (2002) 3 SCC 25;

(v) Manager, Reserve Bank of India, Banglore Vs. S.Mani and others, reported in 2005 SCC (L&S) 609.

6.It is therefore, requested to allow the present petition.

7.On the other-hand, Mr.P.H.Pathak, learned advocate appearing for the respondents workmen has opposed this petition and has also filed the affidavit-in-reply. It is submitted that this is a petition under Article 227 of the Constitution of India, and, therefore, this Court may not interfere with the judgment and award passed by the Labour Court. It is submitted that the Labour Court has recorded the finding that the respondents workmen had completed 240 days in a preceding year before termination, and, therefore, termination of the respondents workmen is in complete contravention of Section 25-F of the Industrial Disputes Act, 1947 and it is rightly held by the Labour Court that the termination of the respondents workmen is illegal. He submitted that the petitioner cannot be allowed to raise the new plea for the first time before

this Court since the plea of fixed term contract or applicability of Sub-clause (bb) of Section 2(oo) of the Act was not argued before the Labour Court and onus to prove the applicability of Section 2(oo)(bb) is on the employer and there must be a written contract and admittedly in the present case, there is no written contract which has been produced either before this Court or before the Labour Court. In support of his submission, Mr.Pathak has relied upon the following decisions :.

(i) Central Bank of India Vs. S.Satyam and others, reported in AIR 1996 SC 2526;

(ii) S.M.Nilajkar and others Vs. Telecom District Manager, Karnataka, reported in (2003) 4 SCC 27;

(iii) Desai Mafatlal Rajmalbhai Vs. Collector, Banaskantha and another, reported in 1995(1) GCD 576 (Guj.);

(iv) Kirtiben B.Amin Vs. Mafatlal Apparels, reported in 1995(2) GLR 1362;

(v) Syed T.A.Naqshbandi and others Vs. State of Jammu & Kashmir and others, reported in (2003)9 SCC 592.

8.It is, therefore, requested to dismiss the present petition.

9.Heard the learned advocates for the parties.

10.It is not in dispute that the respondents – workmen were appointed by the petitioner for the work of sale and distribution of text books, note books etc., at concessional rate. It is recorded by the Labour Court that before termination of the services of the respondents, the provisions of Section 25-F have not been complied with. At this stage, reference is required to be made to the provisions of Sections 2(oo)(bb) and 25(F) of the Industrial Disputes Act which provides as under :

> “Definitions – In this Act, unless there is anything repugnant in the subject or context, -
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> (oo) `retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
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> (a) voluntary retirement of the workman ; or
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> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of

employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein ; or

© termination of the service of a workman on the ground of continued ill-health;

25-F. Conditions precedent to retrenchment of workmen — No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

© notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by

notification in the Official Gazette."

11. Considering the aforesaid provisions as well as considering the facts of the present case, there is a breach of the provisions of Section 25-F of the Act and, therefore, the Labour Court has rightly come to the conclusion that there is a breach of the provisions of Section 25-F of the Act. It is also recorded by the Labour Court that the respondents have worked for more than 240 days with the petitioner. Therefore, the requirement of Section 25-F of the Act would be satisfied if a workman has worked for 240 days in a period of 12 months and it is not necessary that a workman should have been in the service of the employer for complete one year. The Labour Court, after considering the evidence Exhs.14 and 16 on record, has come to the conclusion that the respondents workmen have worked for more than 240 days. It is required to be noted that the respondents workmen have produced on record the statement showing the salary wherein the salary for the period from 4.10.1986 to 6.10.1989 has been shown as well as the attendance has also been shown, and, therefore, it can be said that initial burden of proof which was on the workmen has been complied with by producing the cogent evidence on

record. In this view of the matter, the provisions of Section 25-F of the Act being mandatory in nature are clearly applicable and since no notice or wages in lieu of the period of notice, no any retrenchment compensation was paid to the respondents, their termination of service is invalid. At the same time, it is equally true that 240 days of continuous service does not by itself give rise to a claim of permanence, but the effect of non-compliance of Section 25-F of the Act would only restore to the workman the same status which he held when his services were terminated. Under these circumstances, even if the respondents workmen are reinstated in service by the impugned judgment and award, their status which was held by them before their termination of services is restored.

12. So far as the aspect with regard to back wages which have been awarded by the Labour Court by the impugned judgment and award is concerned, it is required to be noted that during the pendency of reference before the Labour Court, the concerned respondents have not got employment and this fact has also been noticed by the Labour Court in its judgment and award, and, therefore, the Labour Court has rightly awarded the back wages. Under the circumstances, I do not think it proper to

interfere with the part of the back wages.

13.Under the circumstances, this petition is required to be rejected. This petition is dismissed. Interim relief, if any, granted earlier stands vacated forthwith. Rule is discharged with no order as to costs.

(SHARAD D DAVE, J)

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